

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SUE A. WILSON,

Petitioner,

Case No. 12-cr-20607-04

v.

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION, DENYING MOTION TO
AMEND SENTENCE, AND DENYING PLAINTIFF'S MOTION TO VACATE
SENTENCE UNDER 28 U.S.C. § 2255**

On April 21, 2016, Petitioner Sue A. Wilson was sentenced to twelve months and one day of imprisonment after pleading guilty to conspiracy to defraud the United States and providing false information to the Social Security Administration. ECF No. 178. On December 13, 2016, Wilson filed a motion to amend her sentence. ECF No. 188. On January 6, 2017, Wilson filed a motion seeking habeas relief pursuant to 28 U.S.C. § 2255. ECF No. 191. Wilson was informed that her motion to amend her sentence would be construed as a motion seeking habeas relief under § 2255, and she consented to that recharacterization of her motion. ECF Nos. 189, 190. Both motions were then referred to Magistrate Judge Patricia T. Morris. ECF No. 194.

On August 10, 2017, Judge Morris issued a report recommending that both motions be denied. Judge Morris explained that Wilson was sentenced within the applicable guideline range and thus her sentence was not substantively unreasonable or fundamentally defective.

Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report,

neither Petitioner nor Respondent filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Before the petitioner may appeal this Court's dispositive decision, a certificate of appealability must be issued. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R.App. P. 22(b). A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a court rejects a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). "A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying that standard, a district court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of the petitioner's claims. *Id.* at 336-37. "The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rules Governing § 2254 Cases, Rule 11(a), 28 U.S.C. § 2254.

Having considered the matter, the Court concludes that the petitioner has failed to make a substantial showing of the denial of a constitutional right. Accordingly, a certificate of appealability is not warranted in this case. The Court further concludes that Petitioner should not be granted leave to proceed *in forma pauperis* on appeal, as any appeal would be frivolous. *See* Fed. R. App. P. 24(a).

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 199, is **ADOPTED**.

It is further **ORDERED** that Petitioner Wilson's motion to amend sentence and motion to vacate, ECF Nos. 188, 191, are **DENIED**.

It is further **ORDERED** that a certificate of appealability is **DENIED**.

It is further **ORDERED** that leave to proceed *in forma pauperis* on appeal is **DENIED**.

Dated: September 7, 2017

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on September 7, 2017.

s/Kelly Winslow
KELLY WINSLOW, Case Manager